

**SPRINT COMMUNICATIONS COMPANY**

**Telecommunications Services**

*Various Advertising Agencies*

- **Disclosure of material terms of an offer, in very small print on the back side of a service provider's promotional materials does not constitute clear and conspicuous disclosure.**

**Basis of Inquiry:** Two direct-mail pieces nationally distributed by Sprint Communications Company were brought to the attention of the NAD by NYNEX. Both advertisements were directed to America West Airlines customers and were associated with its frequent flier program.

The first promotional piece invited participants in American West Airlines' frequent flier program to earn bonus miles with Sprint. It informed the reader that "...when you choose Sprint, you're going with the *long-distance* carrier ranked #1 in the 1996 J.D. Powers and Associates' Customer Satisfaction Study" The reader could "switch to Sprint and receive 5,000 Bonus Miles ... plus ... five miles for every dollar spen[t] on *long-distance* calling....," by checking the box marked, "Yes, I would like to earn a total of six miles for every *long distance* dollar billed..." on the attached enrollment form. On the back of this mailing, the first item on a list which appears in small print in a section under the title, "*Long-Distance Authorization*" explains: "My signature on this form authorizes Sprint to notify the local telephone company to switch my long distance service and my local toll service, if available, to Sprint (Emphases added).

The second promotional piece, which also offers the frequent traveler Bonus Miles for switching to Sprint, describes the Sprint Sense® programs under the heading "Sprint *Long-distance* Calls Are As little As A Dime Per Minute." In the enrollment form the customer is given the choice between "Sprint Sense for residential *long-distance* service or "Sprint Sense International [for] low Sprint rates on both domestic and international calls...." Like in the first piece, item one of seven listed under the heading "*Long-Distance Authorization*" on the back of this promotional piece discloses: "My signature on this form authorizes Sprint to notify the local telephone company to switch my long-distance service *and my local toll service*, if available, to the Sprint calling plan...." (Emphases added)

**Challenger's Position:** The challenger maintained that this advertising campaign is deceptive because millions of telephone customers are being asked to subscribe to one particular type of service, when, in fact, they are subscribing to something else. The challenger explained that long distance, local and regional (intra-state toll calls) service are three different services which, in many states, may be ordered separately A customer ordering long distance service from Sprint, or another carrier, should not (without giving express authorization) be automatically subscribed to regional service for which there is vigorous competition. According to the challenger, this promotional practice amounts to "slamming," i.e., changing a customer's carrier without the customer's knowledge.

The challenger argued that the first of these direct mail pieces contains all the necessary components of a "bait and switch" scheme. According to the challenger, the bait is the offer of up to 7,500 America West Bonus Miles for enrolling with Sprint for residential long distance service and remaining a Sprint customer for six months. The switch, according to the challenger, is that by accepting this offer the customer "will inadvertently subscribe to Sprint for regional service as well." It pointed out that only the "mousetype on the reverse side of the LOA disclosers] that the consumer has also subscribed to Sprint as the regional carrier.

The challenger also noted that the text in the second promotional piece repeatedly refers to Sprint's long-distance services. Again, it pointed out that only on the reverse side of the mailer, "in minuscule type, does the advertiser finally disclose that 'My signature on this form authorizes Sprint to notify the local telephone company to switch my long-distance service and my local toll service if available, to the Sprint calling plan ...' (Emphasis added.)"

In support of its position, the challenger cited several FTC cases for the general principle that all material terms of an offer must be clearly and conspicuously disclosed.

**Advertiser's Position:** The advertiser explained that, because its promotional mailing is sent to potential customers in all states - many of which permit local toll call competition and others which do not - it chooses not to list all the types of long distance in the body of the copy. The advertiser maintained that it is its belief that consumers, who generally do not think in terms of interlata vs. intralata or interstate vs. intrastate, consider local toll calls to be long-distance calls since they pay for them on a per minute basis. It also referred to Section 64.1150(e) (4) of the FCC Rules and Regulations as a reflection of the FCC policy that contemplates local toll calls (intralata) as long distance calls. It, therefore, argued that its "broader" definition of the term long-distance is consistent with consumer perceptions and FCC policy.

In the alternative, the advertiser argued that it seems highly unlikely that consumers will not read the applicable information prior to making their decision to switch long distance service. The advertiser pointed out that this information is conveyed not only in the advertisement but also in the fulfillment materials sent to a customer who has been switched to Sprint.

**Decision:** The types of telecommunications services and options that are available to consumers are increasingly broad and progressively diverse. The rapid growth of this industry has afforded consumers a plethora of new, and sometimes overwhelming, choices. Because the potential for consumer confusion has always been one of NAD's concerns, it has consistently held that it is essential that consumers be well-informed about the options that are available to them.

The promotional materials that were the focus of this inquiry were distributed in certain states that permitted competition among local toll service carriers. Consumers in those states had the right to choose long distance services from one provider and local toll service from another provider. Consumer awareness of this choice was at the crux of the controversy that stemmed from this case.

NAD concluded that the fact that, in some states, there is competition among regional toll service providers and that consumers were entitled to choose among them, was material and thus warranted disclosure. There was nothing in the record to establish, the fact that when consumers elect to use one carrier for their long distance service, they also intend to subscribe to that carrier for their regional toll services. Quite to the contrary, there is significant potential for consumer confusion about the nature and types of services being offered because there is a lack of uniformity as to the terminology used by the industry to describe these services. Given the absence of standard and well-recognized definitions, NAD cannot assume customers understand the meaning of terms upon which the industry itself cannot agree.

In light of the diversity and complexity of the available services, NAD concluded that, in order to avoid the potential for consumer confusion and to attain the consumer's truly informed consent, an advertiser must make every effort to clearly communicate to the consumer the nature and extent of the services it is offering. NAD also concluded that the disclosure of additional material information in very small print on the back of the document does not constitute adequate disclosure. Similarly, information contained in the fulfillment materials mailed to a consumer after the offer has been accepted is not an effective or timely means of providing the requisite information.

NAD, therefore, recommended that future promotional materials be modified by clearly and conspicuously incorporating the additional material terms in the body of the document.

**Advertiser's Statement:** "While Sprint believes that the advertisements are clear and consistent with customers' understanding of the changing telecommunications environment, Sprint will provide additional explanation relating to local toll calls on future advertisements." (#3394 CS, closed 6/30/97)